Air Pollution Control Board
Brian P. Bilbray District 1
Dianne Jacob District 2
Pamela Slater District 3
Leon L. Williams District 4
John MacDonald District 5

Air Pollution Control Officer
R. J. Sommerville

NOTICE OF WORKSHOP

REVISIONS TO STATE IMPLEMENTATION PLAN:

ATTAINMENT DEMONSTRATION AND RATE-OF-PROGRESS PLAN
CONFORMITY OF FEDERAL TRANSPORTATION AND GENERAL ACTIONS

The San Diego County Air Pollution Control District (District) will hold a public meeting at the time and place noted below to discuss proposed revisions to the District's State Implementation Plan (SIP) to be submitted to the federal Environmental Protection Agency (EPA): Ozone Attainment Demonstration and Rate-of-Progress Plan; a Memorandum of Agreement between regional, state, and federal air quality and transportation agencies regarding Transportation Conformity procedures; and Regulation XV - Determination of Conformity of General Federal Actions. Comments regarding the proposed SIP revisions may be made verbally at the meeting, or in writing prior to the meeting.

DATE: September 19, 1994

TIME: Attainment Demonstration: 9:00 to 12:00 a.m.
Transportation and General Conformity: 1:00 to 3:00 p. m.

PLACE: Scottish Rite
Joseph Shell Room
1895 Camino del Rio South
San Diego CA 92108

OZONE ATTAINMENT DEMONSTRATION AND RATE-OF-PROGRESS PLAN

The 1990 Clean Air Act Amendments (the Act) require a SIP revision be submitted to EPA by November 15, 1994, to:

1. Demonstrate that by 1999, San Diego County emissions will not cause ozone concentrations exceeding the federal standard, and that when considering transported pollution from the South Coast Air Basin, the standard will be attained by 2010.

2. Provide 9% Rate-of-Progress emission reductions from state and local programs between 1996 and 1999 for the ozone precursors volatile organic compounds (VOC) and/or oxides of nitrogen (NOx).

3. Include contingency measures that could automatically be implemented in 1997 or 2000 if the mandated reductions are not achieved in 1996 or 1999.

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The deadline for Serious ozone nonattainment areas to demonstrate attainment for locally generated ozone is 1999. Attainment is demonstrated by the Urban Airshed Model (UAM) showing that local projected VOC and NOx emissions will not cause ozone concentrations exceeding the federal ozone standard of 0.12 parts per million (ppm). The maximum predicted 1999 local emission ozone concentration of 0.111 ppm meets the federal standard. However, pollution transported into the region from the South Coast Air Basin will continue to cause the standard to be exceeded beyond 1999. San Diego will attain the standard on transport days in 2010 when overwhelming transport from the South Coast is abated.

No new control measures are necessary to demonstrate attainment in San Diego County beyond those already required in the 1992 and 1993 SIP revisions. Furthermore, measures required to meet Severe area requirements, but not required for Serious areas, are not reflected in the attainment demonstration. Attainment is demonstrated without additional control measures required for Severe areas.

Because no new control measures are included in the attainment demonstration, Post-1996 Rate-of-Progress relies solely on motor vehicle emission reductions from the California motor vehicle emission control program. That program is more stringent than the federal program. In addition, the contingency measures submitted in the 1993 SIP revision are retained in the 1994 SIP revision.

TRANSPORTATION AND GENERAL CONFORMITY

The Act also requires a SIP revision specifying procedures for determining whether proposed federal actions are consistent with the SIP. The proposed Transportation Conformity Memorandum of Agreement (MOA) outlines procedures to be followed by local, state, and federal agencies in determining whether transportation plans, projects, and programs are consistent with the SIP. Proposed Regulation XV would establish similar procedures for other general federal actions. The proposed MOA and Regulation would fulfill federal requirements for emissions calculations, and determining consistency with the SIP.

The MOA and Regulation must be submitted to the federal Environmental Protection Agency by the California Air Resources Board (ARB) by November 25 (Transportation) and November 30 (General), 1994, to avoid federal sanctions. Because the MOA is not a regulation, and proposed Regulation XV will not significantly affect the environment (including air quality) or emissions limitations, no socioeconomic impact assessment, and no state environmental analysis under the California Environmental Quality Act (CEQA), is required. Following the workshop, the Board will consider adoption of the proposed MOA and Regulation for submittal to ARB to meet federal deadlines. As the Metropolitan Planning Organization for the region, the San Diego Association of Governments (SANDAG) Board of Directors must also adopt the MOA. Additional signatures to the agreement must be obtained by the deadline, but EPA has indicated partial submittals should be made if any signatures are missing by the deadline.

Transportation Conformity – Memorandum Of Agreement

The Transportation Conformity MOA provides:

- **Nondiscretionary Criteria and Procedures** [40 CFR 51.392 - 51.462] – Pursuant to the federal Clean Air Act and federal regulations, emission projections for all federally funded transportation projects and/or funding plans must show a net emissions decrease. Standards, modeling methodology, and approval criteria for Transportation Conformity findings for all regionally significant transportation projects, plans, and programs must be specified. As the region's Metropolitan Planning Organization, SANDAG already employs these procedures.
- **Emissions Budget** – An emissions budget, or cap on allowable emissions, is established. All transportation plans, programs and projects must be modeled to demonstrate that associated emissions will not exceed the budget. All regionally significant roadway (including bicycle and pedestrian facilities) and transit projects must be included in the analysis, regardless of funding source.
- **Consultation –** The District and related federal, state, and regional agencies will adopt a consultation process for review of transportation and air quality planning documents. Lead agencies are required to establish proactive public consultation procedures, including solicitation of comments from traditionally underserved segments of the community.

Regulation XV – Conformity of General Federal Actions

Proposed Regulation XV provides:

- **Prohibition** [40 CFR 51.850] – No federal government entity may engage in, support in any way, license, permit, or approve any activity which does not conform to an applicable State or Federal Implementation Plan.
- **Applicability** [40 CFR 51.853] – General Conformity requirements apply to any non-exempt actions by a federal agency resulting in emissions exceeding specified thresholds, and not otherwise regulated. Exempt actions include routine maintenance; ongoing program activities, or replacement of those activities with similar activities at the same site(s); environmental compliance activities such as toxic cleanup operations; and land transfers, such as for reuse of former military facilities.
- **Criteria for Determining Conformity** [40 CFR 51.858] – Any federal agency undertaking a nonexempt action shall calculate projected emissions from those direct and indirect sources *under its ongoing control*. For example, leasing a retired military base for commercial air service might require implementation of ridesharing services to reduce vehicle emissions, while selling the land for this purpose would not. Emissions exceeding a threshold value may be offset by emissions reductions offsite, mitigated by the federal agency, or accounted for by a SIP revision.
- **Procedures for Conformity Determinations** [40 CFR 51.859] – A federal agency undertaking a nonexempt action where expected emissions exceed a threshold must prepare a Draft Conformity Determination using specified procedures. The District, other agencies, and the public have 30 days to review a Draft Conformity Determination; the federal agency must respond in writing to comments.

- **Mitigation of Air Quality Impacts** [40 CFR 51.860] – Before determining that an action conforms, the federal agency making the determination must obtain written commitments from the persons or agencies implementing mitigation measures identified as conditions for a positive determination. These measures become federally enforceable.

Copies of the draft SIP revisions are available upon request by contacting Pat Hackley or Catherine Turvey at (619) 694-3307. Questions regarding the Attainment Demonstration may be directed to Carl Selnick at (619) 694-3338; questions concerning Conformity may be directed to Andy Hamilton at (619) 694-8965.

MORRIS DYE
Deputy Director (Acting)

MD:jo
08194

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County ....)

PROPOSED RULE 1501
OF REGULATION XV
OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

On motion of Member ______________, seconded by Member __________________ the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

Proposed Rule 1501 is to read as follows:

DISTRICT RULE 1501 - CONFORMITY OF GENERAL FEDERAL ACTIONS

§1551.850 - PROHIBITION

(a) The purpose of Rule 1501 is to assure that Federal Agencies do not take or support actions which are in any way inconsistent with the efforts of the San Diego Air Pollution Control District (the District) to achieve the National Ambient Air Quality Standards (NAAQS), and that federal agencies do not fail to take advantage of opportunities to assist in the achievement of the NAAQS. Under the Clean Air Act Section 176(c), as amended (42 U.S.C. 7401 et. seq.) and regulations under 40 CFR part 51 subpart W, no department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

(c) The preceding sentence does not include Federal actions where either:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final Environmental Assessment (EA), environmental impact statement

(EIS), or Finding of No Significant Impact (FONSI) that was prepared prior to the effective date of this rule, or

(2) (i) Prior to the effective date of this rule, an EA was commenced or a contract was awarded to develop the specific environmental analysis,

(ii) Sufficient environmental analysis was completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under Section 176(c) of the Clean Air Act (Act), and

(iii) A written determination of conformity under Section 176(c) of the Act was made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of Rule 1501, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

§1551.851- STATE IMPLEMENTATION PLAN (SIP) REVISION

(a) The Federal conformity rules under 40 CFR part 51 Subpart W and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. Following EPA approval of the conformity provisions (or a portion thereof) in a revision to the SIP, the approved (or approved portion of the) criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the District's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the SIP is revised to specifically remove them from the SIP and that revision is approved by EPA.

§1551.852 - DEFINITIONS

Terms used but not defined in this part shall have the meaning given them by the federal Clean Air Act ("Act") and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under 42 U.S.C. 7472 of the Act that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under Section 110 of the Act, or promulgated under Section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a National Ambient Air Quality Standard ("NAAQS") at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emission offsets, for purposes of Section 1551.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the United States Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of an existing violation of an standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable, and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency, including, but not limited to, (i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility; (ii) emissions related to the activities of employees of contractors or Federal employees; (iii) emissions related to employee commutation; (iv) emissions related to the use of Federal facilities under lease or temporary permit; (v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under Section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of Section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. The San Diego Association of Governments is the designated MPO in San Diego County.

Milestone has the meaning given in Sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to Section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM-10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Nonattainment Area (NAA) means an area designated as nonattainment under Section 107 of the Act and described in 40 CFR part 81.

__Precursors of a criteria pollutant are:__

(1) For ozone, nitrogen oxides (NOx), unless an area is exempted from NOx requirements under Section 182(f) of the Act, and volatile organic compounds (VOC), and

(2) For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

__Reasonably foreseeable emissions__ are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

__Regionally significant action__ means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

__Regional water and/or wastewater projects__ include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

__Total of direct and indirect emissions__ means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under Section 1551.853, paragraph (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted.

§1551.853 - APPLICABILITY

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in Rule 1501.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(l) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in **nonattainment areas (NAAs):**

	Tons/Year
Ozone (VOC's or NOx)	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region	
VOC	50
NOx	100
Carbon monoxides	
All NAA's	100
SO_2 or NO_2	
All NAA's	100
PM-10	
Moderate NAA's	100
Serious NAA's	70
Pb	
All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in **maintenance areas:**

	Tons/Year
Ozone (NOx), SO_2 or NO_2	
All Maintenance Areas	100
Ozone (VOC's)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxides	
All maintenance areas	100
PM-10	
All maintenance areas	100
Pb	
All maintenance areas	25

(c) The requirements of Rule 1501 shall not apply to:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to

banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Individual Actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(d) Notwithstanding the other requirements of Rule 1501, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (Section 173 of the Act) or the prevention of significant deterioration (PSD) program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section;

(3) Research, investigations, studies, demonstrations, or training [other than those exempted under Section 1551.853(c)(2)], where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under Section 1551.853(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under Section 1551.853(d)(2) are exempt from the requirements of Rule 1501 only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(l) of this section, the Federal agency makes a new determination as provided in paragraph (e)(l) of this section.

(f) Notwithstanding other requirements of Rule 1501, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(l) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(l) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(l) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform , the basis for the presumptions, and the means for obtaining access to documentation of the analysis, assumptions, emission factors, and criteria used as the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under Section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of Rule 1501, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of Section 1551.850 and Sections 1551.855-860 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(l) of this section, that action shall not be presumed to conform and the requirements of Section 1551.850 and Sections 1551.855-860 shall apply for the Federal action.

(k) The provisions of Rule 1501 shall apply in all nonattainment and maintenance areas.

§1551.854 - CONFORMITY ANALYSIS

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to Rule 1501 must make its own conformity determination consistent with the requirements of Rule 1501. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§1551.855 - REPORTING REQUIREMENTS

(a) A Federal agency making a conformity determination under Section 1551.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Act and the MPO a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under Section 1551.858.

§1551.856 - PUBLIC PARTICIPATION

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under Section 1551.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under Section 1551.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under Section 1551.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the **final** conformity determination.

(d) A Federal agency must make public its final conformity determination under Section 1551.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§1551.857 - FREQUENCY OF CONFORMITV DETERMINATIONS

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under Section 1551.855, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under Section 1551.855.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in section 1551.853(b), a new conformity determination is required.

§1551.858 - CRITERIA FOR DETERMINING CONFORMITV OF GENERAL FEDERAL ACTIONS

(a) An action required under Section 1551.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Section 1551.853, paragraph (b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis, or

(ii) meet the requirements of paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM-10,

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to the District's attainment or maintenance demonstration after 1990 and the District makes a determination as provided in paragraph (A) or where the District makes a commitment as provided in paragraph (B):

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the District to result in a level of emissions which, together with all other emissions in the nonattainment (or

maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the District to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the California Air Resources Board makes a written commitment to EPA which includes the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination.

(C) Where a Federal agency made a conformity determination based on a District commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a District commitment is automatically deemed a call for a SIP revision by EPA under Section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the District commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years [described in paragraph (d) of Section 1551.859] do not increase emissions with respect to the baseline emissions;

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990,

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81, or

(3) The year of the baseline inventory in the PM-10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of Section 1551.859] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implemenation plan, based on assumptions regarding per capita use that are developed or approved in accordance with Section 1551.859(a).

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in Section 1551.859, and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to Rule 1501 may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§1551.859 - PROCEDURES FOR CONFORMITY DETERMINATIONS OF GENERAL FEDERAL ACTIONS

(a) The analyses required under Rule 1501 must be based on the latest planning assumptions.

(1) All current planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood

stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under Rule 1501 must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA, or an alternative model approved by EPA for use in California, and available for use in the preparation or revision of SIPs in Califronia must be used for the conformity analysis as specified below:

(i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under Rule 1501 must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under Rule 1501, except Section 1551.858, paragraph (a)(l), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(l) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an emissions budget.

§1551.860 - MITIGATION OF AIR QUALITV IMPACTS

(a) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measure and the tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (a).

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (a) of this section.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with Sections 1551.858 and 1551.859, and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of Section 1551.856 and the public participation requirements of Section 1551.857.

(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(g) After the State SIP is revised to include this rule and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

IT IS FURTHER RESOLVED AND ORDERED that the subject proposed Rule 1501 of Regulation XV, shall take effect upon adoption.

PASSED AND ADOPTED by the Air Pollution Control Board of the San Diego County Air Pollution Control District, State of California, this __________________ day of __________________, 1994 by the following votes:

AYES:
NOES:
ABSENT:

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY ______________________________
DEPUTY

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County . . . .)

PROPOSED RULE 1502
OF REGULATION XV
OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

On motion of Member ______________, seconded by Member ________________ the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

Proposed Rule 1502 is to read as follows:

DISTRICT RULE 1502 - TRANSPORTATION CONFORMITY

Each agency which pursuant to 40 Code of Federal Regulations (CFR) Part 51, Subpart T or 40 CFR Part 93 participates in determinations of conformity to State or Federal Implementation Plans by transportation plans, programs, and projects developed, funded or approved under Title 23 United States Code or the Federal Transit Act, and each recipient of federal funds designated under Title 23 United States Code or the Fedral Transit Act, must execute a memorandum of agreement with the District and the San Diego Association of Governments, the metropolitan planning organization, which binds such agencies or recipients to criteria and procedures to assess the conformity of such transportation plans, programs, and projects, consistent with 40 CFR Part 51, Subpart T and 40 CFR Part 93.

IT IS FURTHER RESOLVED AND ORDERED that the subject proposed Rule 1502 of Regulation XV, shall take effect upon adoption.

PASSED AND ADOPTED by the Air Pollution Control Board of the San Diego County Air Pollution Control District, State of California, this ________________ day of ________________, 1994 by the following votes:

AYES:
NOES:
ABSENT:

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY ______________________________
DEPUTY

1994 FEDERAL STATE IMPLEMENTATION PLAN REVISION INCLUDING THE ATTAINMENT DEMONSTRATION AND RATE-OF-PROGRESS PLAN FOR THE SAN DIEGO AIR BASIN

SAN DIEGO AIR QUALITY

The federal State Implementation Plan (SIP) for San Diego was adopted in the early 1970's, and revised in 1979, 1982, 1992 and 1993. Substantial air quality improvement has been made. National ambient air quality standards (NAAQS) have been attained for nitrogen dioxide, sulfur dioxide, lead, and inhalable particulate matter (PM_{10}). Carbon monoxide (CO) standards have not been violated in the last 4 years. Ozone (photochemical smog) continues to be the major air quality problem in the region.

Ozone is not a pollutant emitted directly into the air but forms in the atmosphere as the result of photochemical reactions involving volatile organic compounds (VOC) and oxides of nitrogen (NOx). These two pollutants are thus precursors to ozone formation and are emitted from motor vehicle, industrial, commercial and household activities. Because photochemical reactions take time to transform precursor emissions into ozone, peak ozone concentrations usually occur in the afternoon, a considerable distance downwind from the emission sources. In San Diego County, ozone standards are exceeded most frequently in the foothills east of the metropolitan area. The polluted air rises to the base of the marine inversion layer, typically around 2000 feet, where it is blown eastward by the sea breeze and trapped against the foothills. (Figure 1)

In 1993, ozone concentrations measured in San Diego County exceeded the federal ozone air quality standard, 0.12 parts per million (ppm) on 14 days. However, on only one of those days was the peak ozone concentration caused by emission sources within San Diego County. On the other 13 days, ozone concentrations exceeding the federal ozone standard were transported into the San Diego area from the South Coast Air Basin (the metropolitan areas of Los Angeles, Orange, San Bernadino and Riverside Counties). Ozone and precursor emissions are transported into the San Diego area from the South Coast Air Basin during "Santa Ana" wind conditions. Winds blowing toward the southwest transport the South Coast smog out over the ocean, and the sea breeze brings it onshore into San Diego County. (Figure 2) When the transported smog cloud is at ground level, the highest ozone concentrations are measured at coastal and near-coastal monitoring sites. When the smog cloud is elevated, coastal sites may be passed over, and the transported ozone measured further inland.

Analyses have shown that all the highest ozone concentrations measured in San Diego County are caused by transported ozone and precursors from the South Coast Air Basin. On days when violations of the federal ozone standard are caused by local emissions, the peak ozone concentration exceeds the standard by just a small amount.

FEDERAL CLEAN AIR ACT REQUIREMENTS

The Clean Air Act Amendments enacted on November 15, 1990 (the Act) established a new framework for attaining the NAAQS, classifying areas as Marginal, Moderate, Serious, Severe or Extreme, according to the severity of pollutant concentrations in the area, and requiring increasingly stringent control programs based on the classification.

Reclassification

The federal Environmental Protection Agency (EPA) initially classified the San Diego Air Basin (San Diego County) as a Severe ozone nonattainment area. However, the San Diego County Air Pollution Control District (the District) has demonstrated to the EPA that all ozone concentrations measured in San Diego County that were high enough to qualify for the Severe classification were transported into the San Diego area from the South Coast Air Basin. Because the area's ozone design value of 0.185 ppm is within 5% of the 0.180 ppm cutpoint between the Serious and Severe classifications, Section 181(a)(4) of the Act gives the EPA discretion to consider the level of pollution transport in determining which classification is most appropriate for the area. Therefore, the District has requested the EPA to reclassify the San Diego region to a Serious ozone nonattainment area rather than Severe.

The Act requires Serious areas to attain the federal ozone standard in 1999 and Severe areas to attain in 2005. The EPA originally required, as a prerequisite for reclassification, that the District demonstrate that San Diego County would attain the federal ozone standard by 1999, even considering the overwhelming pollution transport from the South Coast Air Basin. However, the South Coast Air Basin, the source of the transported pollution that causes San Diego's highest ozone concentrations, is classified as an Extreme ozone nonattainment area and the attainment deadline established in the Act for Extreme areas is 2010. In order to demonstrate attainment by 2010, the South Coast Air Quality Management Plan contains the most ambitious control strategy in the country scheduled to be implemented as expeditiously as practicable. Therefore, additional control measures or further acceleration of control measure implementation to accelerate attainment would not be practicable. Until the South Coast Air Basin attains the federal ozone standard, the San Diego Air Basin can not be expected to attain the federal ozone standard. Consequently it would be impossible for San Diego to meet EPA's original reclassification requirements.

Many areas across the country that are similarly impacted by transported pollution from higher classified upwind areas objected to the EPA's attainment requirements as being impossible to meet. As a result, the EPA is developing a new policy on "Ozone Attainment Demonstrations for Areas Affected by Transport" interpreting the Act more reasonably to allow such downwind areas to avoid being subjected to more stringent control requirements that would have been caused by overwhelming transported pollution preventing attainment by the statutory deadline.

In line with the new policy, the EPA has revised the reclassification requirements for San Diego. The District is now required as a prerequisite to the reclassification to demonstrate only that San Diego County would be able to attain the federal ozone standard in 1999 on both local and transport days in the absence of overwhelming transported pollution. For local days, the demonstration is to simulate projected 1999 precursor emission levels in both the San Diego and South Coast Air Basins. For transport days, 1999 San Diego emissions would again be simulated, but the EPA policy allows the influence of overwhelming transport to be mitigated by assuming that transported ozone and precursors from the South Coast Air Basin would be abated to the level required for that basin to attain the ozone standard in 2010. The District has prepared such a demonstration and submitted it to the EPA on August 1, 1994, fulfilling the EPA's requirements for the reclassification to be approvable. Therefore, this SIP revision addresses only those control requirements mandated by the Act for Serious ozone nonattainment areas.

Extended Attainment Deadline

The transport policy the EPA is developing would allow a downwind nonattainment area impacted by transported ozone and precursors from a higher classified upwind area to request an attainment deadline extension up to the statutory attainment deadline for the higher classified upwind area and would require the SIP for the downwind area to contain an attainment demonstration reflecting the extended attainment date. Therefore, in addition to the 1999 local attainment demonstration

mentioned above, this SIP revision includes a 2010 transport attainment demonstration and requests an attainment deadline extension to 2010.

SIP Submittal Requirements

The 1990 Clean Air Act Amendments required State Implementation Plan (SIP) revisions in 1992, 1993 and 1994. The 1992 submittal addressed statutorily specified Reasonably Available Control Technology, New Source Review, and transportation control requirements. The 1993 submittal addressed the Act's Rate-of-Progress requirement by identifying control measures being implemented to reduce ozone precursor emissions 15% between 1990 and 1996. This 1994 revision addresses Act provisions required to be submitted by November 15, 1994, and is required to meet the following three mandates:

1. Demonstrate that by 1999, San Diego County emissions will not cause ozone concentrations exceeding the federal standard, and that even considering transported ozone and precursor emissions from the South Coast Air Basin, the ozone standard will be attained in the San Diego Air Basin by 2010. [§182(c)(2)(A)]

2. Provide 9% Rate-of-Progress emission reductions from state and local programs between 1996 and 1999 for the ozone precursors volatile organic compounds and/or oxides of nitrogen. [§182(c)(2)(B)]

3. Include contingency measures that could automatically be implemented in 1997 or 2000 if the mandated reductions were not achieved in 1996 or 1999. [§172(c)(9) and §182(c)(9)]

Under the Act, states are required to submit SIP revisions to the EPA. This SIP revision is prepared by the San Diego County Air Pollution Control District for submittal to the EPA through the State of California Air Resources Board (ARB).

ATTAINMENT DEMONSTRATION

Attainment is demonstrated by using the Urban Airshed Model (UAM) to show that the ozone precursor emissions expected to be generated in the attainment year will not cause ozone concentrations above the federal ozone air quality standard, 0.12 parts per million (ppm). Because peak ozone concentrations in the San Diego Air Basin exceeding the federal ozone standard are caused by local San Diego County precursor emissions on some days (local days) and by transported ozone and precursors from the South Coast Air Basin on other days (transport days), this attainment demonstration contains analyses for both local days and transport days.

The maximum ozone concentration predicted in the San Diego modeling domain in 1999 on local days is 0.111 ppm which meets the federal standard. Therefore, attainment is demonstrated for local days in 1999, the attainment deadline established by the Act for Serious ozone nonattainment areas. However, pollution transported into the San Diego area from the South Coast Air Basin will continue to cause the federal ozone standard to be exceeded in the San Diego Air Basin beyond 1999.

The EPA's new policy on "Ozone Attainment Demonstrations for Areas Affected by Transport" requires analyzing a series of transport scenarios to adequately demonstrate the appropriateness of requesting an attainment deadline extension.

1. Demonstrate with UAM that overwhelming transport of ozone and precursor emissions from the South Coast Air Basin will prevent San Diego County from attaining the federal ozone standard in 1999 on transport days.

2. Demonstrate with UAM that San Diego County would be able to attain the federal ozone standard in 1999 on transport days if overwhelming transport of ozone and precursor emissions from the South Coast Air Basin were abated to the level required for the South Coast Air Basin to attain the ozone standard in 2010.

3. Demonstrate that San Diego County will attain the federal ozone standard on transport days in 2010 when overwhelming transport of ozone and precursor emissions from the South Coast Air Basin will be abated. This demonstration does not require an additional UAM simulation as long as San Diego County precursor emissions are demonstrated to be no higher in 2010 than in 1999.

4. Demonstrate that accelerating implementation of control measures or implementing additional control measures in San Diego County could not provide for attainment in 1999 on transport days nor even accelerate attainment in San Diego County any earlier than 2010, due to overwhelming transport of ozone and precursor emissions from the South Coast Air Basin.

The results of the transport analyses are as follows:

1. The maximum ozone concentration predicted in the San Diego modeling domain in 1999 on transport days is 0.125 ppm which violates the federal standard due to overwhelming transport of ozone and precursor emissions from the South Coast Air Basin.

2. However, if the South Coast Air Basin emission reductions projected for 2010 could be achieved in 1999, the maximum ozone concentration predicted in the San Diego modeling domain in 1999 on transport days would be 0.114 ppm which meets the federal standard.

3. Because San Diego County precursor emissions are projected to be lower in 2010 than in 1999, and analysis 2 above demonstrated that the higher 1999 emission levels could provide for attainment, San Diego County is demonstrated to attain the federal ozone standard on transport days in 2010 when overwhelming transport of ozone and precursor emissions from the South Coast Air Basin will be abated.

4. Additional control measures in San Diego County could not accelerate attainment on transport days, because design value ozone concentrations were monitored at coastal sites where San Diego County emissions have no opportunity to contribute to the polluted air mass transported from the South Coast Air Basin over the ocean into San Diego County. (The origins of the air masses containing the peak ozone concentrations were determined based on trajectory analyses using the methodology submitted to the EPA in December 1993. UAM could not be utilized in this analysis because data are not available to simulate with UAM the transport episodes that have peak ozone concentrations at coastal sites.)

<u>Consequently, this SIP revision requests the EPA to extend the attainment deadline for the San Diego Air Basin to 2010.</u> Documentation of the modeling is provided in Appendix 1.

Attainment Year Emission Projections

The San Diego Air Basin UAM simulation was developed based on smog episodes monitored in August and September 1989. Accordingly, the base case UAM input emission inventory reflects 1989 precursor emissions. To demonstrate attainment, 1999 and 2010 growth and control factors are applied to adjust the UAM input emission inventory to reflect expected attainment year conditions.

The 1999 and 2010 levels of ozone precursor emissions in San Diego County that provide for attainment are estimated by first projecting 1999 and 2010 baseline emissions to reflect population growth and changes in industrial activity between 1989 and 1999/2010, and then adjusting the 1999 and 2010 baseline emission projections by applying control factors to reflect the control measures to be implemented between 1989 and 1999. Documentation of the derivation of the 1999 and 2010 growth factors is provided in Appendix 2.

Attainment Demonstration Control Measures

Stationary Source Control Measures

Stationary source control factors were developed to reflect the level of emission controls expected in 1999, beyond the controls in place in the 1989 base case, attributable to existing District rules and new control measures required by the Act for Serious ozone nonattainment areas. For this attainment demonstration, 2010 San Diego control levels are assumed to be the same as 1999. Documentation of the derivation of the stationary source control factors is provided in Appendix 3. The stationary source control measures implemented since 1989 and reflected in the attainment demonstration affect the following source categories:

Consumer Products (ARB control measure)
Landfills (existing Rule 59)
Metal Parts and Products Coating (amendments to Rule 67.3)
Solvent Cleaning (amendments to Rule 67.6)
Aerospace Coating Operations (amendments to Rule 67.9)
Kelp Processing (amendments to Rule 67.10)
Wood Products Coating Operations (existing Rule 67.11)
Polyester Resin Operations (existing Rule 67.12)
Marine Coating Operations (existing Rule 67.18)
Bakery Ovens (new Rule 67.24, 6/94)
Industrial and Commercial Boilers (new Rule 69.2, 9/94)
Stationary Combustion Turbines (new Rule 69.3, 9/94)
Stationary Internal Combustion Engines (new Rule 69.4, 9/94)
Automotive Refinishing (proposed Rule 67.20, 2/95)
Plastic, Glass, Composites and Rubber Coating (proposed Rule 67.23, 3/95)
Can Coating (proposed amendments to Rule 67.4, 3/95)

The rules listed above as "new" were adopted during the last few months preceding this submittal. The rules listed above as "proposed" could not be adopted by the November 15, 1994 deadline for submitting this SIP revision to EPA, but they are scheduled to be adopted and submitted within the next few months, as indicated by the listed dates.

The 1992 SIP revision committed to control measures for Foam Manufacturing (new Rule 67.22, adopted 6/94) and Paint and Ink Manufacturing (new Rule 67.19, adopted 6/94) to fulfill Severe area Reasonably Available Control Technology requirements. Those measures were required because one source in each of those categories emits more VOC than 25 tons per year, the Severe area major source trigger level. However, the sources in question do not emit over the 50 tons per

year major source trigger level for Serious areas. Consequently, if the EPA approves the District's reclassification request, the rules would not be required by the Act and the District would request that they be withdrawn from the SIP. Therefore, those rules have not been included in this attainment demonstration, since this attainment demonstration focuses on requirements for Serious areas.

Mobile Source Control Measures

Nonroad mobile sources, including off-road recreational vehicles, lawn and garden utility equipment, construction and farm equipment, locomotives, and ships, will be controlled by regulations issued by the ARB. Documentation of the derivation of the nonroad mobile source control factors is also provided in Appendix 3.

On-road motor vehicle emissions will be reduced by the state of California's new motor vehicle emission standards including the low- and zero-emission vehicle requirements, reformulated gasoline and diesel fuel requirements. The emission reduction effects of the new vehicle standards and reformulated fuels are reflected in the motor vehicle emission factors generated by ARB's EMFAC7F motor vehicle emission factor model.

The District ran Urban Airshed Model simulations for 1999 local days, both with and without an enhanced motor vehicle emission inspection and maintenance (I/M) program. The model indicated the same maximum ozone concentration meeting the federal ozone standard in either case. Thus, attainment can be demonstrated in San Diego County without relying on emission reductions from enhanced I/M. Enhanced I/M is, however, the only control measure available that could provide the 3% emission reduction required for contingency measures. Therefore, although an enhanced I/M program is being implemented in the San Diego area, it is not reflected in this attainment demonstration. The enhanced I/M program will instead be claimed as a contingency measure in the 1994 SIP revision. For the attainment demonstration, continuation of the current basic I/M program is assumed. Documentation of the motor vehicle emission estimation procedures is provided in Appendix 4.

The 1992 SIP revision also committed to an Employee Commute Options program (Rule 1301, adopted 1/94) mandated by §182(d)(1)(B) for Severe ozone nonattainment areas. If the EPA approves the District's request to reclassify San Diego County from Severe to Serious, Rule 1301 will automatically be rescinded pursuant to the sunset clause in the rule. Therefore, the attainment demonstration does not reflect any trip reduction program emission reductions.

RATE-OF-PROGRESS PLAN

Because no new control measures are included in the attainment demonstration, Post-1996 Rate-of-Progress relies solely on motor vehicle emission reductions provided by the California motor vehicle emission control program being more stringent than the federal motor vehicle control program. The Rate-of-Progress emission reductions to be achieved between 1996 and 1999 are documented in Appendix 5.

CONTINGENCY MEASURES

The Act requires the SIP to include contingency measures that would be implemented automatically if the region fails to meet an emission reduction milestone or attainment deadline. EPA guidance requires contingency measures to provide ozone precursor (VOC and/or NOx) emission reductions amounting to 3% of the adjusted 1990 baseline emission level. For NOx emission reductions to be credited as ozone precursor emission reductions for contingency measures, the attainment demonstration must indicate NOx emission reductions are required for attainment. The attainment demonstration in this 1994 SIP revision indicates a 26% VOC emission reduction and a 20% NOx

emission reduction in San Diego County will prevent local emission sources from causing violations of the federal ozone standard in 1999.

As in the 1993 SIP revision, the adjusted 1990 baseline relative to the 1996 milestone was 236.26 tons per day VOC and 209.30 tons per day NOx. Therefore, contingency measures must be capable of providing up to 7.09 tons per day VOC reductions and/or up to 6.28 tons per day NOx reductions in 1997 if necessary to compensate for failure to meet the emission reduction milestone in 1996. The adjusted 1990 baseline relative to the 1999 milestone is *236.26* tons per day VOC and *209.30* tons per day NOx. Therefore, contingency measures must be capable of providing up to *7.09* tons per day VOC reductions and/or up to *6.28* tons per day NOx reductions in 2000 if necessary to compensate for a failure to meet the 1999 emission reduction milestone.

In the 1993 SIP revision, the second year of implementation of the biennial enhanced motor vehicle emission inspection and maintenance (I/M) program was submitted to fulfill the contingency measure requirements associated with the 1996 milestone for the 15% Rate-of-Progress Plan. (Emission reductions from the first year of biennial implementation were credited toward the 15% Rate-of-Progress.) The 1993 SIP revision claimed as potential contingency measure emission reductions 6.41 tons per day VOC emission reductions and 6.80 tons per day NOx reductions in 1997 for the second year of biennial enhanced I/M implementation.

Because no credit for the enhanced I/M program is claimed in the attainment demonstration, enhanced I/M is still available to be claimed as a contingency measure in this 1994 SIP revision. Both the VOC and NOx emission reductions provided by enhanced I/M are eligible to be claimed as contingency measure reductions, because the attainment demonstration control strategy relies on both VOC and NOx emission reductions. Therefore, the contingency measures submitted in the 1993 SIP revision are retained unchanged for this 1994 SIP revision. If the 1996 Rate-of-Progress emission reduction milestone is met, the emission reductions in 1997 from the second year of biennial enhanced I/M implementation will be surplus and remain available to credit as contingency measure reductions in 2000, in case the 1999 milestone is not met. If the 1996 milestone is not met, and if the contingency measure is used to correct the 1996 shortfall, EPA guidance indicates the District must submit replacement contingency measures within one year after the current contingency measure is triggered.

EPA also requires submittal of contingency measures for carbon monoxide. Since 85% of the carbon monoxide in the San Diego region is emitted by motor vehicles, which are under the jurisdiction of the state Air Resources Board in California, the District has no locally implemented carbon monoxide control measures. Therefore, no locally adopted contingency measures are needed. The Air Resources Board is submitting the required carbon monoxide contingency measures for inclusion in the SIP.

REVISED 1990 BASE YEAR EMISSION INVENTORY

The ARB has further refined the 1990 Base Year Emission Inventory and will submit it to EPA. A summary table of the revised 1990 Base Year Emission Inventory is in Appendix 6.

Figure 1

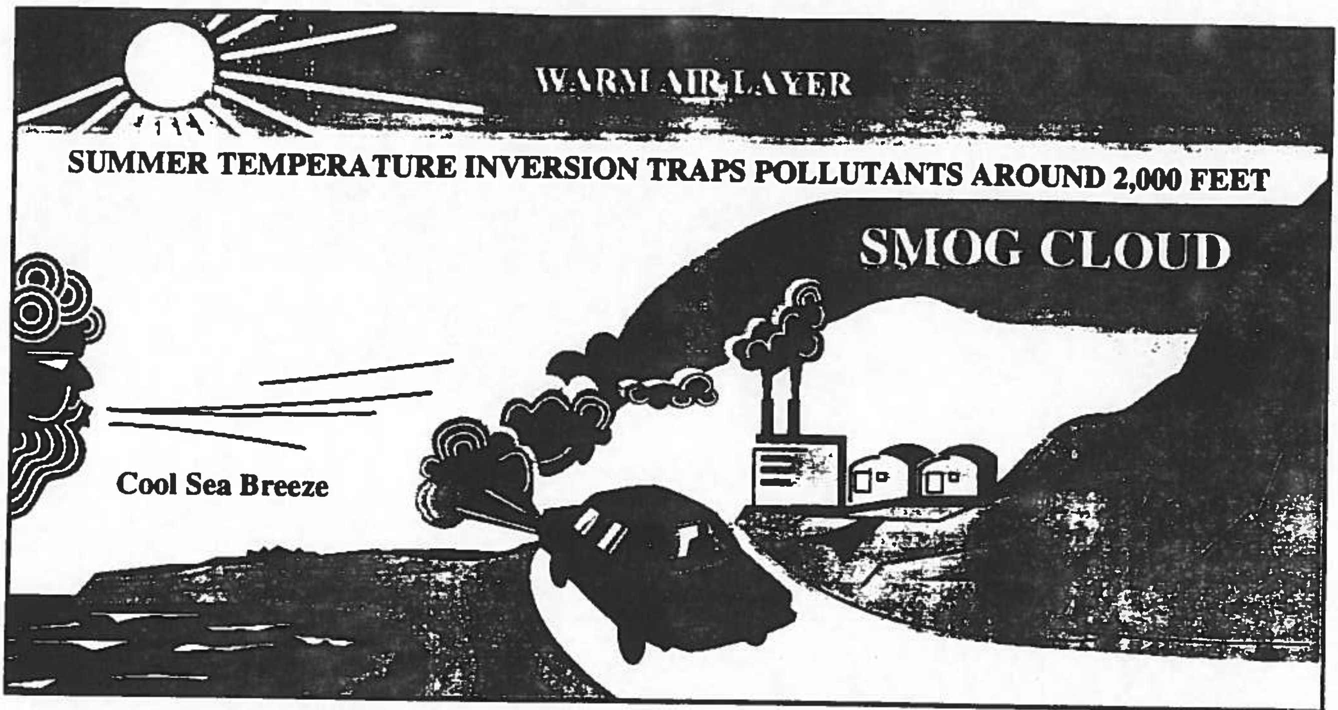
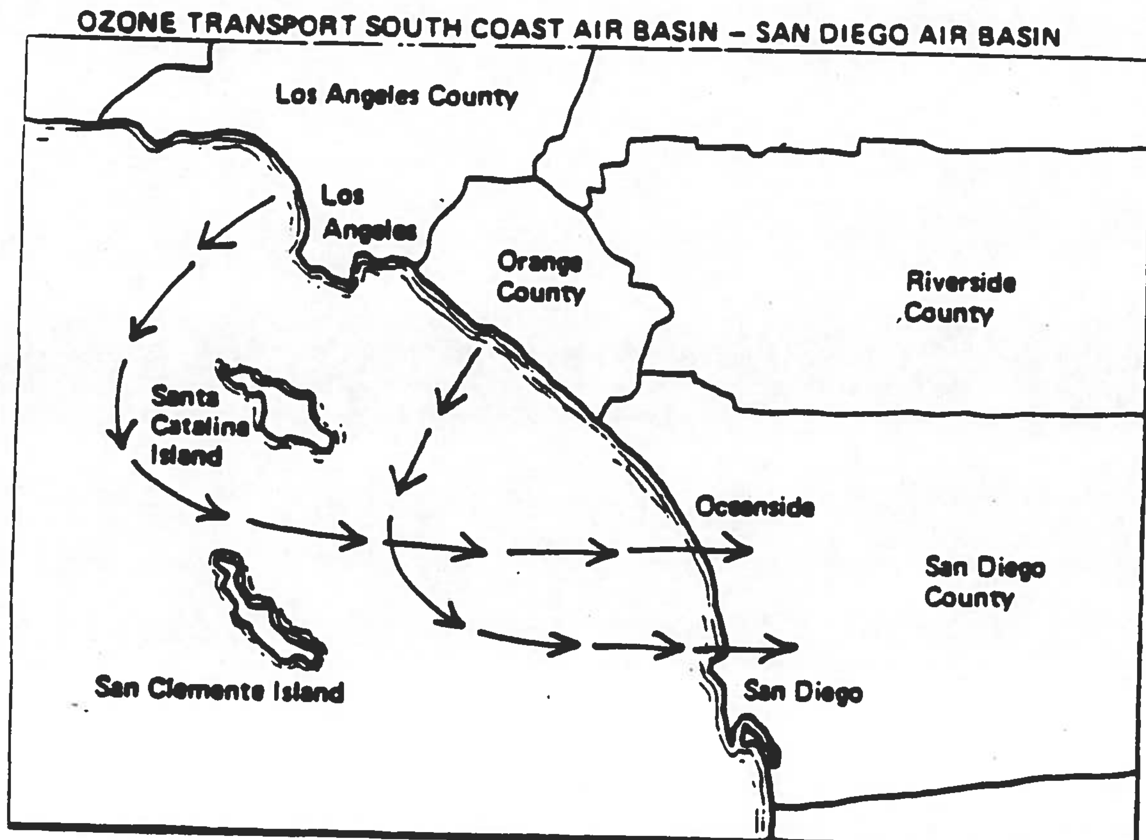


FIGURE 2



FEDERAL GENERAL CONFORMITY REGULATION

The Code of Federal Regulations, title 40, chapter I, subchapter C, parts 6 and 51 are amended and part 93 is added as follows:

PART 6--[AMENDED]

1. The authority citation for part 51 continues to read as follows:

   Authority: 42 U.S.C. 7401-7671q.

2. Section 6.303 is amended by reserving paragraphs (c) through (g) and revising paragraphs (a) and (b) to read as follows:

(a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under Section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.

(b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in Section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

PART 51--[AMENDED]

1. The authority citation for part 51 continues to read as follows:

   Authority: 42 U.S.C. 7401-7671q.

2. Part 51 is amended by adding a new subpart W to read as follows:

W -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

Section

51.850 Prohibition.

51.851 State Implementation Plan (SIP) revision

51.852 Definitions

51.853 Applicability

51.854 Conformity analysis

51.855 Reporting requirements

51.856 Public participation

51.857 Frequency of conformity determinations

51.858 Criteria for determining conformity of general Federal actions

51.859 Procedures for conformity determinations of general Federal actions

51.860 Mitigation of air quality impacts

W -- DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

§51.850 - PROHIBITION

(a) The purpose of this rule is to assure that Federal Agencies do not take or support actions which are in any way inconsistent with the efforts of the San Diego Air Pollution Control District (the District) to achieve the National Ambient Air Quality Standards (NAAQS), and that federal agencies do not fail to take advantage of opportunities to assist in the achievement of the NAAQS. Under the Clean Air Act Section 176(c), as amended (42 U.S.C. 7401 et. seq.) and regulations under 40 CFR part 51 subpart W, no ~~No~~ department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

(c) The preceding sentence does not include Federal actions where either:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final Environmental Assessment (EA), environmental impact statement (EIS), or Finding of No Significant Impact (FONSI) that was prepared prior to the effective date of this rule, or

(2) (i) Prior to the effective date of this rule, an EA was commenced or a contract was awarded to develop the specific environmental analysis,

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under Section 176(c) of the Clean Air Act (Act), and

(iii) A written determination of conformity under Section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

§51.851- STATE IMPLEMENTATION PLAN (SIP) REVISION

(a) Each State must submit to the Environmental Protection Agency (EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this subpart.

The State must submit the conformity provisions within 12 months after November 31, 1993, or within 12 months of an area's designation to nonattainment, whichever date is later.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to non-Federal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

§51.852 - DEFINITIONS.

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under 42 U.S.C. 7472 of the Act that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under Section 110 of the Act, or promulgated under Section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

CAA means the federal Clean Air Act, as amended.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emission offsets, for purposes of Section 51.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the United States Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of an existing violation of an standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable, and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under Section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of Section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in Sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to Section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM-10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Nonattainment Area (NAA) means an area designated as nonattainment under Section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

(1) For ozone, nitrogen oxides (NOx), unless an area is exempted from NOx requirements under Section 182(f) of the Act, and volatile organic compounds (VOC), and

(2) For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering

all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under Section 51.853, paragraph (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this section.

§51.853 - APPLICABILITY

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(l) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in **nonattainment areas (NAAs):**

	Tons/Year
Ozone (VOC's or NOx)	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region	
VOC	50
NOx	100
Carbon monoxides	
All NAA's	100
SO_2 or NO_2	
All NAA's	100
PM-10	
Moderate NAA's	100
Serious NAA's	70
Pb	
All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in **maintenance areas:**

	Tons/Year
Ozone (NOx), SO_2 or NO_2	
All Maintenance Areas	100
Ozone (VOC's)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxides	
All maintenance areas	100
PM-10	
All maintenance areas	100
Pb	
All maintenance areas	25

(c) The requirements of this subpart shall not apply to:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) The following actions where the emissions are not reasonably foreseeable, such as

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Individual actions ~~Actions~~ which implement a decision to conduct or carry out a conforming program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a conforming land management plan that has been found to conform to the applicable implementation plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (Section 173 of the Act) or the prevention of significant deterioration (PSD) program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section;

(3) Research, investigations, studies, demonstrations, or training [other than those exempted under Section 51.853(c)(2)], where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under Section 51.853(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under Section 51.853(d)(2) are exempt from the requirements of this subpart only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(l) of this section, the Federal agency makes a new determination as provided in paragraph (e)(l) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(l) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(l) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(l) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the analysis, assumptions, emission factors, and criteria used as the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under Section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of Section 51.850 and Sections 51.855-860 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(l) of this section, that action shall not be presumed to conform and the requirements of Section 51.850 and Sections 51.855-860 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

§51.854 - CONFORMITY ANALYSIS

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§51.855 - REPORTING REQUIREMENTS

(a) A Federal agency making a conformity determination under Section 51.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Act and the MPO a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under Section 51.858.

§51.856 - PUBLIC PARTICIPATION

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under Section 51.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under Section 51.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under Section 51.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the **final** conformity determination.

(d) A Federal agency must make public its final conformity determination under Section 51.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§51.857 - FREQUENCY OF CONFORMITY DETERMINATIONS

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under Section 51.855, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under Section 51.855.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in section 51.853(b), a new conformity determination is required.

§51.858 - CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS

(a) An action required under Section 51.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Section 51.853, paragraph (b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) specified in paragraph (b) of this section, based on **areawide air quality** modeling analysis and local air quality modeling analysis, or

(ii) meet the requirements of paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM-10,

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (A) or where the State makes a commitment as provided in paragraph (B):

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination.

(C) Where a Federal agency made a conformity determination based on a State commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a State commitment is automatically deemed a call for a SIP revision by EPA under Section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years [described in paragraph (d) of Section 51.859] do not increase emissions with respect to the baseline emissions;

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990,

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity ~~year~~), if a classification is promulgated in 40 CFR part 81, or

(3) The year of the baseline inventory in the PM-10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of Section 51.859] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable ~~SIP~~ implemenation plan, based on assumptions regarding per capita use that are developed or approved in accordance with Section 51859(a) (Procedures for conformity determinations of general Federal actions).

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in Section 51.859, and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§51.859 - PROCEDURES FOR CONFORMITY DETERMINATIONS OF GENERAL FEDERAL ACTIONS

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All current planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and

congestion most recently developed ~~approved~~ by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified below:

(i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this Subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except Section 51.858, paragraph (a)(l), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(l) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an emissions budget.

§51.860 - MITIGATION OF AIR QUALITY IMPACTS

(a) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measure and the tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (a).

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (a) of this section.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with Sections 51.858 and 51.859, and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of Section 51.856 and the public participation requirements of Section 51.857.

(f) The implementation plan revision required in Section 51.851 of this subpart shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.